

**DEPARTMENT OF STATE REVENUE
REVENUE RULING ST 96-06
JULY 29, 1996**

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Sales and Use Tax - Microwave Television Service

Authority: IC 6-2.5-2-1, IC 6-2.5-4-11, IC 6-2.5-4-6

Sales and Use Tax - Equipment Used to Provide Microwave Television Service

Authority: IC 6-2.5-5-13, IC 6-2.5-5-8

STATEMENT OF FACTS

Taxpayer is a microwave television service provider. Television signals that originate outside of Indiana are relayed to Indiana via satellite. The satellite signals are retransmitted by the taxpayer to its local subscribers by microwave technology.

The service is provided to subscribers through an antenna, mast, and down converter on the subscriber's roof, which is connected to a set top converter box in the subscriber's home. A remote control is provided to operate the converter box.

The Department is requested to rule as to the application of Indiana sales and use tax to the taxpayer's service and the equipment which the taxpayer provides to its subscribers.

DISCUSSION - Service

Sales tax is imposed on retail transactions in Indiana. IC 6-2.5-2-1(a) states, "[a]n, excise tax known as the state gross retail tax, is imposed on retail transactions made in Indiana." Subsection (b) requires that the retail merchant collect the tax as agent for the state. Retail transactions are sales of tangible personal property and those sales of services specifically designated to be retail transactions pursuant to IC 6-2.5-4.

Cable television service is subject to Indiana sales tax pursuant to IC 6-2.5-4-11. The taxpayer describes itself as a provider of "wireless cable television service." The defining characteristic of cable television service is that the signal is received via the physical connection of a cable to the subscriber's home. Since the taxpayer's service is not carried to the subscriber's home via cable, the taxpayer cannot be a cable television service provider pursuant to IC 6-2.5-4-11.

The more appropriate statute to use to evaluate the taxpayer's situation is IC 6-2.5-4-6. IC 6-2.5-4-6(a-b) states:

- (a) As used in this section "telecommunication services" means the transmission of messages or information by or using wire, cable, fiber-optics, laser, microwave, radio, satellite, or similar facilities. The term does not include value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.
- (b) A person is a retail merchant making a retail transaction when the person furnishes or sells an intrastate telecommunication service.

The taxpayer is transmitting messages or information within Indiana by use of microwaves. Technically speaking, the telecommunication service is the medium of microwave transmission and not the substantive content of those transmissions. However, these two elements represent a retail unitary transaction. The customer does not contract separately and is not billed separately for these two elements of the service. Therefore, the entire charge is subject to tax.

DISCUSSION - Equipment

Most equipment used to provide telecommunication service is exempt from Indiana sales and use tax. IC 6-2.5-5-13 states:

Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is:

- (A) classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed by the Indiana utility regulatory commission; or
- (B) mobile telecommunications switching office equipment, radio or microwave transmitting or receiving equipment, including, without limitation, towers, antennae, and property that perform a function similar to the function performed by any of the property described in clause (A); and

(2) the person acquiring the property furnishes or sells intrastate telecommunication service in a retail

transaction described in IC 6-2.5-4-6.

The equipment used by the taxpayer to send and receive microwave signals at its sending and receiving locations is exempt from Indiana sales and use tax. This does not include the antennae, masts and down converters placed in and on the subscribers' residences. These items, along with the settop converter and any wiring or equipment used at subscribers locations, are being provided to the subscribers for their use and are subject to tax. The taxable items could be purchased exempt pursuant to IC 6-2.5-5-8 if the items were to be rented to subscribers.

RULING

The taxpayer's service is subject to Indiana sales tax. The equipment purchased by the taxpayer to send and receive microwave signals at its locations and equipment purchased for rental are exempt from Indiana sales and use tax. Equipment provided to customers is subject to sales and use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the Ruling. If this occurs, the ruling will not afford the taxpayer any protection.